

1 Christopher R. Pitoun (SBN 290235)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
3 301 N. Lake Avenue, Suite 920
4 Pasadena, California 91101
5 Telephone: (213) 330-7150
6 Facsimile: (213) 330-7152
7 Email: christopherp@hbsslaw.com

8 Robert B. Carey (*pro hac vice*)
9 Leonard W. Aragon (*pro hac vice*)
10 Michella A. Kras (*pro hac vice*)
11 HAGENS BERMAN SOBOL SHAPIRO LLP
12 11 West Jefferson, Suite 1000
13 Phoenix, Arizona 85003
14 Telephone: (602) 840-5900
15 Facsimile: (602) 840-3012
16 Email: rob@hbsslaw.com
17 leonarda@hbsslaw.com
18 michellak@hbsslaw.com

19 *Attorneys for Plaintiffs*
20 *(Additional Counsel on Signature Page)*

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 SOUTHERN DIVISION

24 N.Z., R.M., B.L., S.M., and A.L.,
25 individually and on behalf of themselves
and all others similarly situated,

26 Plaintiffs,

27 v.

28 FENIX INTERNATIONAL LIMITED,
FENIX INTERNET LLC, BOSS
BADDIES LLC, MOXY
MANAGEMENT, UNRULY AGENCY
LLC (also d/b/a DYSRPT AGENCY),
BEHAVE AGENCY LLC, A.S.H.
AGENCY, CONTENT X, INC., VERGE
AGENCY, INC., AND ELITE
CREATORS LLC,

Defendants.

Case No. 8:24-cv-01655-FWS-SSC
Assigned to Hon. Fred W. Slaughter

JOINT RULE 26(f) REPORT

Scheduling Conference

Date: February 6, 2025
Time: 9:00 a.m. PT
Judge: Hon. Fred W. Slaughter
Courtroom: 10B

1 Plaintiffs N.Z., R.M., B.L., S.M., and A.L. (collectively, “Plaintiffs”),
2 Defendants Fenix International Limited and Fenix Internet LLC (collectively, the
3 “Fenix Defendants”), and Defendants Content X, Inc., Elite Creators LLC, Moxy
4 Management, Verge Agency, Inc. (collectively, the “Agency Defendants,”
5 collectively with the Fenix Defendants, “Defendants,” and collectively with
6 Plaintiffs, the “Parties”) hereby jointly submit the following Rule 26(f) Report.

7 **A. Statement of the Case**

8 1. Plaintiffs’ Statement.

9 Fenix Defendants run OnlyFans.com (“OnlyFans”), an online social media,
10 content sharing, and video sharing platform. OnlyFans promotes direct and personal
11 interaction between “Creators,” who create online content, and “Fans,” who
12 purchase or otherwise pay for that content as subscribing members. To distinguish
13 itself from other online platforms—and at the heart of its business model—
14 OnlyFans claims to offer a more personal and direct connection to Creators.
15 OnlyFans promises an “authentic connection” between Fans and Creators and
16 promises Fans that they will be able to “direct message” with a Creator when they
17 subscribe, which is a private interaction between the Fan and the Creator outside of
18 the public view. OnlyFans then monetizes those connections by collecting 20% of
19 all subscription fees, as well as 20% of any pay-per-view fees and tips that are
20 elicited by the Creators through those “direct interactions.”

21 Unbeknownst to Fans, most Creators’ accounts are not run by the Creator but
22 are run entirely by a third-party agency. Each of the Agency Defendants is an
23 agency that runs multiple Creator accounts on OnlyFans. Each Plaintiff is a “Fan”
24 who subscribed to at least one OnlyFans account managed by an Agency
25 Defendant.

26 Rather than provide the direct connection between Plaintiffs and their
27 represented Creators as promised, the Agency Defendants employ professional

1 chatters who impersonate the Creators. Using manipulative tactics that prey on
2 psychological biases and vulnerabilities, chatters are trained to exploit emotional
3 connections by pretending to be the Creators when direct messaging with the Fans.
4 They never reveal they are not the Creators; and, if questioned, they lie to conceal
5 the impersonation. The Agency Defendants perpetrate these lies to elicit
6 subscription fees, pay-per-view fees, and tips from the Fans. Like the Fenix
7 Defendants, the Agency Defendants keep a portion of all fees collected on behalf of
8 the Creators.

9 The Fenix Defendants are not only aware of, they allow the use of agencies
10 and chatters on the OnlyFans platform—even though it violates OnlyFans’ terms of
11 service—because it increases their revenue exponentially. Plaintiffs bring this
12 action because OnlyFans’ business model is a fraud and they did not know.
13 Plaintiffs were unaware that Defendants engaged in a scheme to deceive Fans into
14 believing that that were communicating “directly” with the Creators, when, in
15 Plaintiffs’ case, they were actually interacting with professional chatters pretending
16 to be the Creators.

17 2. Defendants’ Statement.

18 Plaintiffs bring this putative class action lawsuit against Fenix International
19 Limited, which operates the website OnlyFans.com, and Fenix Internet, which
20 provides payment-processing assistance to Fenix International Limited in the
21 United States, as a Defendant (collectively, “Fenix” or “Fenix Defendants”).
22 Plaintiffs also name various Agency Defendants, including Content X, Inc., Elite
23 Creators LLC, Moxy Management, and Verge Agency, Inc.

24 Plaintiffs’ Complaint is fatally flawed for various reasons, including but not
25 limited to:

26 • In bringing this action in this Court, Plaintiffs ignore the binding
27 forum-selection clause that Plaintiffs repeatedly agreed to in the

28

1 OnlyFans.com Terms of Service, which requires Plaintiffs to bring
2 their claims in the courts of England.

3 • The Court does not have personal jurisdiction over either Fenix entity.
4 The Court does not have general jurisdiction over Fenix because they
5 are not incorporated or headquartered in California, and do not
6 otherwise have such continuous and systematic contacts that they are
7 essentially at home in California. The Court does not have specific
8 jurisdiction over Fenix because they do not have sufficient minimum
9 contacts with California, the Plaintiffs' claims do not arise out of or
10 relate to Fenix's connections with California, and requiring Fenix to
11 defend this lawsuit in California would be unreasonable.

12 • Plaintiffs agreed to a choice-of-law clause providing that all their
13 claims related in any way to their agreement with Fenix and/or their
14 use of the OnlyFans.com website are governed by English law, which
15 precludes the U.S. law-based claims they assert in their Complaint;

16 • Plaintiffs fail to state a RICO or RICO conspiracy claim because they
17 fail to allege the existence of a racketeering enterprise, do not plead
18 cognizable damages, do not plead that the Defendants formed a
19 conspiracy to violate RICO or commit wire fraud, and do not plead
20 that Fenix had specific intent to defraud Plaintiffs;

21 • Plaintiffs fail to state a Video Privacy Protection Act claim because
22 they fail to allege that Fenix or the Agency Defendants knowingly
23 disclosed their personal identifiable information to third parties, and
24 the Agency Defendants are not video tape service providers;

25 • Plaintiffs fail to state a California Invasion of Privacy Act claim
26 because they consented to the alleged conduct, and otherwise fail to
27 plead that their communications were unlawfully intercepted;

28

- 1 Plaintiffs fail to state a Federal Wiretap Act claim because a violation
2 of the Wiretap Act cannot occur if any of the parties to the
3 communication—here, the Agency Defendants—has given prior
4 consent to such interception; and
- 5 Plaintiffs’ remaining California state law claims are each barred by
6 OnlyFans’ Terms of Service, which fatally undermine Plaintiffs’
7 theories that Fenix misled them into purchasing chat services offered
8 by OnlyFans Creators, or had a duty to prevent other people from
9 misleading Plaintiffs about those services.

10 **B. Subject Matter Jurisdiction**

11 This Court has subject matter jurisdiction over this action under the Class
12 Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class
13 Member is of diverse citizenship from one Defendant, there are more than 100
14 Class Members, and the aggregate amount in controversy exceeds \$5,000,000
15 exclusive of interests and costs. Subject matter jurisdiction also arises under 28
16 U.S.C. § 1961, et seq., based upon the federal RICO claims asserted under 18
17 U.S.C. § 1961, et seq.

19 **C. Legal Issues**

20 1. Plaintiffs’ Statement.

21 The Complaint raises the following legal issues, some of which are mixed
22 questions of law and fact:

24 a. Whether this case can be certified as a class action under Rule
25 23 of the Federal Rules of Civil Procedure?

26 b. Whether Defendants engaged in or conspired to engage in a
27 RICO enterprise that harmed Plaintiffs and putative class

1 members?

2

3 c. Whether OnlyFans breached their contracts with Plaintiffs and
4 putative class members?

5 d. Whether OnlyFans committed fraud or fraud by concealment
6 against putative class members?

7 e. Whether OnlyFans committed deceit under Cal. Code §§ 1709
8 & 1710?

9

10 f. Whether OnlyFans violated California False Advertising Law,
11 Cal. Bus. & Prof. Code § 17500, et seq.?

12

13 g. Whether OnlyFans violated California's Unfair Competition
14 Law, Cal. Bus. & Prof. Code § 17201?

15

16 h. Whether Defendants are liable to putative class members under
17 the Video Privacy Protection Act, 18 U.S.C. § 2710?

18

19 i. Whether Defendants violated the California Invasion of Privacy
20 Act, Cal. Penal Code § 630 et seq.?

21

22 j. Whether Defendants violated the Federal Wire Tap Act, 18
23 U.S.C. § 2510 et seq.?

24

25 k. Whether putative class members are entitled to injunctive relief?

26

27 l. Whether the Court has personal jurisdiction over OnlyFans?

28

29 m. Whether putative class members are entitled to costs, attorney's
30 fees, restitution, damages, and/or disgorgement?

- n. Whether putative class members are entitled to pre- and post-judgment interest on any amounts awarded?
- o. Whether putative class members are entitled to trebled damages under 18 U.S.C. § 1964(c).
- p. Whether putative class members are entitled to punitive damages?

8 In addition to the foregoing, there is a pending Motion to Dismiss for Forum
9 Non Conveniens (“FNC Motion”) filed by Fenix Defendants. The Motion has been
10 fully briefed. The Motion seeks to dismiss the case on forum non conveniens
11 grounds and Plaintiffs have opposed. Plaintiffs also anticipate that Defendants will
12 argue that this court lacks personal jurisdiction over Defendants, and will file a
13 Motion to Dismiss on that ground if the FNC Motion is denied.

2. Defendants' Statement.

15 Defendants believe that, in addition to the questions raised in the Plaintiffs' 16 Statement above, the Complaint also raises the following legal issues:

- a. Whether Plaintiffs can proceed in this case pseudonymously, without using their real names?
- b. Whether Plaintiffs are bound by the forum-selection clause found in the OnlyFans Terms of Service?
- c. Whether the forum-selection clause selecting the courts of England as the appropriate forum should be enforced?
- d. Whether the Court has personal jurisdiction over the Fenix Defendants?
- e. Whether Plaintiffs' Complaint fails to state a claim upon which

1 relief can be granted as to all Defendants?

2 f. Whether Plaintiffs' recoverable damages, according to proof,
3 were proximately caused by Defendants?

4 g. Whether allowing this lawsuit to proceed as a class action is
5 appropriate?

6 **D. Damages**

7 1. Plaintiffs' Statement.

8 Plaintiffs', on behalf of themselves and putative class members, seek costs,
9 restitution, damages, and/or disgorgement against Defendants for the actions
10 described in the complaint. Plaintiffs and the putative class also seek pre- and post-
11 judgment interest on awarded damages, trebled damages under 18 U.S.C. §
12 1964(c), and punitive damages. Plaintiffs and putative class members also seek an
13 award of attorneys' fees and costs for litigating this action.

14 2. Defendants' Statement.

15 Defendants deny that Plaintiffs are entitled to damages or attorneys' fees of
16 any kind, and believe this action should be dismissed for forum non conveniens as
17 to all defendants, lack of personal jurisdiction as to the Fenix Defendants, and
18 failure to state a claim as to all Defendants.

19 **E. Parties and Evidence**

20 The parties in this case are Plaintiffs N.Z., R.M., B.L., S.M., and A.L., and
21 Defendants Fenix International Limited, Fenix Internet LLC, Content X, Inc., Elite
22 Creators LLC, Moxy Management, Verge Agency, Inc., Unruly Agency LLC, and
23 Behave Agency LLC.

24 1. Plaintiffs' Statement on Evidence.

25 Plaintiffs N.Z., R.M., B.L., S.M., and A.L. are all percipient witnesses, as
26 well as the creators they interacted with, including but not necessarily limited to:

1 Breckie Hill, Sara Underwood, Nicky Gile, Stafanie Gurzanski, Sky Bri, Kaitlin
2 Trujillo, McKinley Richardson, Chyanne Burden, Claire Stone, Emily Elizabeth,
3 Briana Armbruster, Sierra Skye, Tina Louise, Kayla Lauren, Anna Louise, Ryann
4 Murphy, Chloe Rosenbaum, Mathilde Tantot, Pauline Tantot, Summer Soderstrom,
5 Kaitlyn Krems, Jane Wilde, Bella Thorne, Abella Danger, Stephanie Landor, Bri
6 Jordan, Julia Piccolino, Carolina Samani, Cristy Senskey, Tara Electra, Kinsey,
7 Kayla Simmons, Katie Williams, Mikayla Demaiter, Elseana Panzer, Jostasy Nick,
8 and Nala.

9 Defendants' have not yet provided their initial disclosure, but each Defendant
10 will have multiple percipient witnesses that will need to be deposed, in addition to
11 30(b)(6) witnesses for each defendant.

12 Plaintiffs do not anticipate the likely appearance of additional parties.

13 2. Defendants' Statement.

14 In addition to the percipient witnesses identified in Plaintiffs' Statement on
15 Evidence, Defendants expect that third parties that have personal knowledge related
16 to Plaintiffs' claims will need to be deposed and may constitute percipient
17 witnesses in this litigation.

18 Defendants do not anticipate the likely appearance of additional parties.

19 **F. Insurance**

21 1. Plaintiffs' Statement.

22 For each Plaintiff, there are no relevant insurance policies.

23 2. Defendants' Statement.

24 Defendants are investigating potential insurance coverage and will
25 supplement this report as necessary.

1 **G. Manual for Complex Litigation**

2 The Parties agree that the Manual for Complex Litigation is instructive and
3 that it may assist the Parties in efficiently litigating these complex consolidated
4 actions, but the Parties do not believe that it is necessary to adopt any specific
5 provisions at this time.

6 **H. Motions**

8 1. Plaintiffs' Statement.

9 Plaintiffs anticipate filing a motion for class certification. Plaintiffs may also
10 move for default judgment on Defendants Boss Baddies LLC and A.S.H. Agency,
11 as both entities were served but they have failed to appear in this case. Other than
12 those motions, Plaintiffs do not anticipate filing any other motion at this time, but
13 reserve the right and anticipate they will likely contemplate and file other motions,
14 such as, but not limited to, *Daubert* motions and motions in limine, in the future.

15 2. Defendants' Statement.

16 Defendants anticipate filing additional motions to dismiss if the motion to
17 dismiss for forum non conveniens is denied. Fenix Defendants anticipate filing a
18 motion to dismiss for lack of personal jurisdiction, and all Defendants anticipate
19 filing a motion to dismiss for failure to state a claim. Defendants do not anticipate
20 filing any other motion at this time, but reserve the right and anticipate they will
21 likely contemplate and file other motions as the need arises.

23 **I. Dispositive Motions**

25 1. Plaintiffs' Statement.

26 Other than filing the motions for default as identified in Section H above,
27 Plaintiffs do not anticipate filing any additional dispositive motions at this time, but
28 reserve the right to do so.

1 2. Defendants' Statement.

2 Other than filing the motions to dismiss identified in Section H above if the
3 FNC Motion is denied by the Court, Defendants do not anticipate filing any
4 additional dispositive motions at this time, but reserve the right to do so in the
5 future, including but not limited to motions for summary judgment at the
6 appropriate time.

7 **J. Status of Discovery**

8 1. Plaintiffs' Statement.

9 No discovery has taken place, although Plaintiffs are prepared to exchange
10 discovery. But the parties, pursuant to a stipulation described below, agree that
11 discovery should not begin until the Court resolves the FNC Motion. Plaintiffs
12 believe that discovery should open once the Court issues an order regarding the
13 FNC Motion. Even if the Fenix Defendants are dismissed, which is highly unlikely,
14 the case will still go forward against the Agency Defendants. No Agency Defendant
15 has sought dismissal under a forum non conveniens theory, and the Fenix
16 Defendants do not seek to dismiss the Agency Defendants. Indeed, the Agency
17 Defendants only indicated their “non-opposition” to the Fenix Defendants’ FNC
18 Motion; they never joined the motion or affirmatively sought dismissal. As such,
19 the case against the Agency Defendants—and likely Fenix Defendants—will go
20 forward no matter what happens with the Fenix Defendants’ FNC Motion. For
21 these reasons, Plaintiffs believe that discovery should begin once the Court issues
22 and order regarding the FNC Motion.

23 Defendants, however, believe that discovery should not open until the Court
24 decides the anticipated motions to dismiss. Plaintiffs believe this unnecessarily
25 delays the action because (1) the likelihood of this case being dismissed in its
26 entirety against all Defendants is zero; (2) even if OnlyFans is dismissed, which
27 Plaintiffs believe is not likely to happen, the case against the Agency Defendants

1 will go forward; and (3) there is no basis in law or fact to further delay discovery.
2 The only reason Plaintiffs agreed to delay discovery with respect to the FNC
3 Motion is because the existence or non-existence of OnlyFans as a party will help
4 inform the coordination of discovery. But once that issue is resolved, the parties can
5 move forward with discovery without delay.

6 Notwithstanding the foregoing, it is also Plaintiffs' position that all parties
7 should work together to negotiate and finalize a protective order and ESI protocols
8 before the start of formal discovery. Defendants vaguely agreed to do so, but
9 Plaintiffs believe an order requiring them to do so would help facilitate discovery.
10 Notably, it is not an undue burden on Defendants, including Fenix Defendants, to
11 require them to negotiate and finalize a protective order and ESI protocols, and
12 such documents take an inordinate amount of time to finalize in modern, complex
13 litigation. To help facilitate this process, Plaintiffs will send draft protocols and a
14 protective order for review and comment prior to the Case Management
15 Conference. Plaintiffs have also agreed to send a letter informing Defendants of
16 what topics they seek in discovery to help facilitate the negotiation of ESI
17 protocols.

18 2. Defendants' Statement.
19

20 No discovery has taken place. The parties, pursuant to a stipulation, agree
21 that discovery should not begin until *at least* after the Court resolves the FNC
22 Motion. If the Fenix Defendants are dismissed pursuant to the FNC Motion, which
23 Defendants believe is likely, the Agency Defendants believe the case should be
24 dismissed in its entirety because: (i) of the lack of an indispensable party to the case
25 pursuant to FRCP 19; and (ii) allowing this case to be simultaneously litigated in
26 different forums across the globe would risk inconsistent rulings in different courts
27 on identical or substantially similar issues and risk unnecessarily wasting judicial
28

1 resources of multiple jurisdictions. Defendants believe that it is far from certain that
2 the case will go forward if the Fenix Defendants' FNC Motion is granted.

3 Plaintiffs believe that discovery should open once the Court has issued an
4 order regarding the FNC Motion. But if the Fenix Defendants' FNC Motion is
5 denied, the Defendants anticipate filing potentially dispositive motions to dismiss.
6 The Fenix Defendants intend to file a motion to dismiss for lack of personal
7 jurisdiction and failure to state a claim, and the Agency Defendants intend to file
8 motions to dismiss for failure to state a claim. Defendants believe it would be
9 inappropriate and unnecessary to open discovery before the Court has decided
10 whether it has personal jurisdiction over a potentially necessary and indispensable
11 party to the case, as well as whether Plaintiffs can state a claim against any of the
12 Defendants in this action.

13 Nor would keeping discovery closed until resolution of the motions to
14 dismiss unnecessarily delay the action. It is possible that all Defendants will be
15 dismissed, and even if they are not, starting discovery after resolution of the
16 dispositive motions to dismiss would still allow for ample time to conduct
17 discovery under either Plaintiffs' or Defendants' proposed case schedule.

18 Defendants agree that it is important to work together to prepare for
19 discovery in the event that the Court denies the FNC Motion and other motions to
20 dismiss that Defendants anticipate filing in the event of a denial of the FNC
21 Motion. However, Defendants believe it would be premature to order negotiation
22 and finalization of a protective order and ESI protocols before the Court has
23 decided the FNC Motion or other dispositive motions, including those determining
24 whether the Court has personal jurisdiction over the Fenix Defendants. Defendants
25 believe the parties should minimize the distraction and cost that such preparation
26 would entail to the extent possible, given the lengthy proposed case schedules
27 proposed by the parties and the likely dismissal of the entire action. Nevertheless,
28 Defendants have agreed to review Plaintiffs' proposals in good faith and respond

1 accordingly, and believe an order would impose an arbitrary and premature
2 deadline, and ultimately create unnecessary complications to the smooth
3 administration of the case.

4 **K. Discovery Plan**

5 6. Duty to preserve evidence

7 Without waiving any privilege, counsel for Plaintiffs have helped each
8 Plaintiff identify and preserve discoverable evidence. Each Plaintiff is aware of
9 their preservation obligations and each has agreed to preserve discoverable
10 evidence.

11 Without waiving any privilege, counsel for Defendants have also identified
12 and preserved discoverable evidence. Each Defendant is aware of their preservation
13 obligations and each has agreed to preserve discoverable evidence.

14 7. Anticipated Discovery-Related Order and Rule Modifications

15 Plaintiffs do not anticipate needing adjustments to Rule 33, 34, or 35 of the
16 Federal Rules of Civil Procedure, but reserve the right to seek modifications in the
17 future.

18 Plaintiffs believe, for the reasons, already stated that discovery should open
19 once the FNC Motion is decided, and that an order requiring the Parties to negotiate
20 and finalize an ESI order and protective order before the start of discovery would
21 help facilitate discovery going forward.

22 Defendants do not anticipate needing adjustments to Rule 33, 34, or 35 of the
23 Federal Rules of Civil Procedure, but reserve the right to seek modifications in the
24 future.

25 Defendants believe, for the reasons stated above, that discovery should only
26 commence once the dispositive motions are decided, including the anticipated
27 motions to dismiss for lack of personal jurisdiction and failure to state a claim that

1 will be filed if the FNC Motion is denied. For the same reasons, Defendants believe
2 that initial disclosures are not appropriate at this early stage of the case and should
3 be exchanged after the motions above are decided. *See Fed. R. Civ. P 26(a)(1)(C).*
4 Defendants believe that there is no justification for any order regarding ESI and a
5 protective order at this time.

6 3. Positions on Discovery Needed

7 Plaintiffs' Position: Plaintiffs anticipate conducting discovery, as follows,
8 and as illustrated by their proposed discovery schedule.

- 9 • Plaintiffs will serve Requests for Production and Interrogatories on all
10 parties when discovery opens.
- 11 • Defendants will produce all go-get documents within 30-days of
12 discovery opening. Go-get documents are those that can be identified,
13 reviewed, and disclosed without the use of ESI protocols. In other words,
14 all hard copy or readily-available electronic documents that can be
15 identified as responsive to the discovery without using search terms or
16 technology assisted review.
- 17 • It is likely that Defendants will object to Plaintiffs' discovery responses.
18 Plaintiffs anticipate resolving those objections or presenting them to the
19 Court within 30 days of receipt.
- 20 • Defendants will produce ESI on a rolling basis immediately after all
21 discovery disputes regarding Requests for Production are resolved.
- 22 • Defendants will start taking percipient witnesses approximately 40 days
23 after Defendants' responses to Plaintiffs' Requests for Production are
24 complete. This will allow time for Plaintiffs to review all documents and
25 begin preparing deposition outlines.
- 26 • Plaintiffs will disclose experts related to class certification 240 days after
27 the ruling on Defendants' motion(s) to dismiss. Defendants will serve

1 rebuttal reports 45 days later. The parties will complete expert discovery
2 on class certification experts within 45 days of Defendants' rebuttal,
3 including all depositions and document discovery.

- 4 • Plaintiffs' class certification motion will be due 30 days after class
5 certification expert cutoff. Defendants' response is due 35 days later, and
6 Plaintiffs' reply is due 28 days after the response.
- 7 • The Parties will then complete all discovery, including expert discovery
8 that was raised during class certification. Plaintiffs propose the following:
 - 9 ○ Initial disclosure of experts due 60 days after the ruling on the
10 Class Certification Motion. Rebuttal experts are due 45 days later.
 - 11 ○ Expert and Fact Discovery Cutoff: 45 days after rebuttal expert
12 disclosure.
- 13 • Dispositive and Daubert Motion Deadline for all parties, same day as
14 discovery cutoff. Response due 35 days later. Replies due 28 days later.
15 A proposed schedule reflecting the foregoing (as well as Defendants'
16 proposed schedule) is attached as Exhibit A.

17 Defendants' Position: Defendants anticipate conducting discovery as follows,
18 and as illustrated by their proposed discovery schedule.

- 19 • Defendants will serve Requests for Production and Interrogatories on
20 all parties when discovery opens.
- 21 • Plaintiffs will produce all go-get documents within 30 days of
22 discovery opening. Go-get documents are those that can be identified,
23 reviewed, and disclosed without the use of ESI protocols. In other
24 words, all hard copy or readily-available electronic documents that can
25 be identified as responsive to the discovery request without using
26 search terms or technology-assisted review.

- 1 • It is likely that Plaintiffs will object to Defendants' discovery
2 responses. Defendants anticipate resolving those objections or
3 presenting them to the Court within 30 days of receipt.
- 4 • Plaintiffs will produce ESI on a rolling basis immediately after all
5 discovery disputes regarding Requests for Production are resolved.
- 6 • Defendants will start deposing percipient witnesses approximately 40
7 days after Plaintiffs' responses to Defendants' Requests for Production
8 are complete. This will allow time for Defendants to review all
9 documents and begin preparing deposition outlines.
- 10 • Defendants will disclose experts related to class certification 240 days
11 after the ruling on Defendants' motion(s) to dismiss. Plaintiffs will
12 serve rebuttal reports 45 days later. The parties will complete expert
13 discovery on class certification experts within 45 days of Plaintiffs'
14 rebuttal, including all depositions and document discovery.
- 15 • Plaintiffs' class certification motion will be due 30 days after the class
16 certification expert cutoff. Defendants' response is due 35 days later,
17 and Plaintiffs' reply is due 28 days after the response.
- 18 • The Parties will then complete all discovery, including expert
19 discovery that was raised during class certification. Defendants
20 propose the following:
 - 21 ○ Fact discovery cutoff: 60 days after the ruling on the Class
22 Certification Motion.
 - 23 ○ Expert disclosures due 7 days after fact discovery cutoff.
24 Rebuttal experts are due 45 days later.
 - 25 ○ Expert discovery cutoff: 45 days after rebuttal expert
26 disclosures.

1 • Dispositive and Daubert Motion Deadline for all parties: 30 days after
2 expert discovery cutoff. Responses due 35 days later. Replies due 28
3 days later.

4 A proposed schedule reflecting the foregoing is attached as Exhibit A.

5 4. Phasing Discovery

6 The parties do not believe that phasing discovery is necessary, but recognize
7 that certain discovery can be completed after the resolution of the Motion for Class
8 Certification. The parties will work in good faith to ensure all discovery is
9 completed in a timely manner.

10 L. **Settlement Conference and Alternative Dispute Resolution (“ADR”)**

11 1. Plaintiffs’ Statement. The parties agree to conduct private mediation
12 after the Court resolves the Motion for Class Certification, and propose
13 that the ADR deadline should be the same day as the discovery cutoff
14 date.

15 2. Defendants’ Statement. The parties agree to conduct private mediation,
16 and propose that the ADR deadline should be three weeks after the
17 deadline for dispositive motion replies to be filed, as identified in
18 Defendants’ proposed dates in the Schedule Worksheet attached as
19 Exhibit B.

1 **M. Trial Estimate**

2 The parties believe that they are unable to accurately estimate how many trial
3 days will be necessary to resolve this case. The parties respectfully propose that
4 they submit a proposed trial schedule by the discovery cutoff deadline.

5 **N. Trial Counsel**

6 1. For Plaintiffs.

7 Robert B. Carey (*pro hac vice*)
8 Leonard W. Aragon (*pro hac vice*)
9 Michella A. Kras (*pro hac vice*)
10 HAGENS BERMAN SOBOL SHAPIRO LLP
11 11 West Jefferson, Suite 1000
12 Phoenix, Arizona 85003

13 2. For Defendants Fenix International Limited and Fenix Internet LLC.

14 Jason D. Russell (SBN 169219)
15 Peter B. Morrison (SBN 230148)
16 Hillary A. Hamilton (SBN 218233)
17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
18 2000 Avenue of the Stars, Suite 200N
19 Los Angeles, California 90067

20 3. For Defendant Content X, Inc.

21 Nithin Kumar (SBN 300607)
22 KINGFISHER LAW APC
23 P.O. Box 492415
24 Los Angeles, CA 90049

25 4. For Defendant Elite Creators LLC.

26 Michael A. Gehret (SBN 247869)
27 Trinity Jordan (*Pro Hac Vice*)
28 DENTONS DURHAM JONES PINEGAR, P.C.
29 111 South Main Street, Ste. 2400
30 Salt Lake City, Utah 84111

31 5. For Defendant Moxy Management.

32 Oliver Rocos (SBN 319059)
33 Barr Benyamin (SBN 318996)

1 BIRD, MARELLA, RHOW, LINCENBERG, DROOKS &
2 NESSIM LLP
3 1875 Century Park East, 23rd Floor
4 Los Angeles, CA 90067

5 6. For Defendant Verge Agency, Inc.

6 Allen Sattler (SBN 321086)
7 CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
8 3420 Bristol Street, 6th Floor
9 Costa Mesa, CA 92626

10 **O. Magistrate Judge**

11 Per ECF No. 2, this case was assigned to District Judge Fred W. Slaughter
12 and Magistrate Judge Stephanie S. Christensen. The parties do not consent to trial
13 before a Magistrate Judge.

14 **P. Independent Expert or Master**

15 The parties do not believe that an independent scientific expert or master is
16 necessary at this time, but reserve the right to request one in the future.

17 **Q. Schedule Worksheet**

18 The required worksheet is attached hereto as Exhibit B. In addition, the
19 Parties believe that the Court should establish a schedule for class certification
20 proceedings. While the parties are aware of and acknowledge the Court's preferred
21 schedule, this case will need additional time because it will take several months to
22 resolve the FNC Motion and the motions to dismiss that Defendants intend on
23 filing, as well as the motion for class certification that Plaintiffs intend to file.
24 Additionally, given the number of parties, the complexity of the claims, and the
25 necessity of moving for class certification, the parties present an alternative
schedule and ask the Court to adopt one of the schedules proposed by the Parties.

26 Because the Schedule Worksheet does not reflect all of the required dates for
27 a class case, Plaintiffs' proposed schedule and Defendants' proposed schedule are
28 attached hereto as Exhibit A.

R. Other Issues

1. Plaintiffs' Statement.

Plaintiffs do not have any other issues at this time.

2. Defendants' Statement.

Defendants do not have any other issues at this time.

DATED: January 23, 2025 Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By: */s/ Robert B. Carey*

ROBERT B. CAREY

Attorneys for Plaintiffs

Pursuant to CIV. L.R. 5-4.3.4(a)(2)(i), all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Jason D. Russell*

JASON D. RUSSELL

Attorneys for Specially Appearing Defendants
Fenix International Limited and Fenix Internet LLC

KINGFISHER LAW APC

By: */s/ Nithin Kumar*

NITHIN KUMAR

*Attorney for Defendant
Content X, Inc.*

DENTONS US LLP

By: */s/ Michael Gehret*

MICHAEL GEHRET

Attorneys for Defendants

1 BIRD, MARELLA, RHOW, LINCENBERG, DROOKS
2 & NESSIM, LLP

3 By: _____ */s/ Oliver Rocos*
4 **OLIVER ROCOS**
5 *Attorneys for Defendant*
Moxy Management

6 CONSTANGY BROOKS SMITH AND PROPHETE
7 LLP

8 By: _____ */s/ Younjin Lee*
9 **YOUNJIN LEE**
10 *Attorneys for Defendant*
Verge Agency, Inc.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28